

103^D CONGRESS
1ST SESSION

H. R. 3306

To amend the Federal Deposit Insurance Act to regulate the retail sale of nondeposit investment products by insured depository institutions to prevent customer confusion about the uninsured nature of the products, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 19, 1993

Mr. GONZALEZ (for himself and Mr. SCHUMER) introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

A BILL

To amend the Federal Deposit Insurance Act to regulate the retail sale of nondeposit investment products by insured depository institutions to prevent customer confusion about the uninsured nature of the products, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Depository Institution
5 Retail Investment Sales and Disclosure Act”.

1 **SEC. 2. REGULATION OF RETAIL SALES OF NONDEPOSIT IN-**
2 **VESTMENT PRODUCTS BY INSURED DEPOSI-**
3 **TORY INSTITUTIONS.**

4 The Federal Deposit Insurance Act is amended by
5 adding at the end the following new section:

6 **“SEC. 44. REGULATION OF RETAIL SALES OF NONDEPOSIT**
7 **INVESTMENT PRODUCTS BY INSURED DEPOS-**
8 **ITORY INSTITUTIONS.**

9 “(a) DEFINITIONS.—For purposes of this section:

10 “(1) BANKING OFFICE.—The term ‘banking of-
11 fice’ means any office, or any part of any office, of
12 an insured depository institution that is commonly
13 accessible to the general public for the purpose of
14 accepting or withdrawing deposits.

15 “(2) NONDEPOSIT INVESTMENT PRODUCT.—
16 The term ‘nondeposit investment product’—

17 “(A) means any investment product which
18 is not a deposit;

19 “(B) includes shares issued by a registered
20 investment company; and

21 “(C) does not include—

22 “(i) any loan or other extension of
23 credit by an insured depository institution;

24 “(ii) any letter of credit; or

25 “(iii) any other instrument or invest-
26 ment product specifically excluded from

1 the definition of such term by regulations
2 prescribed jointly by the Federal banking
3 agencies.

4 “(b) SCOPE OF APPLICATION.—

5 “(1) APPLICATION LIMITED TO RETAIL ACTIVI-
6 TIES.—The provisions of this section shall not apply
7 with respect to any transaction (which is otherwise
8 subject to the requirements of this section)
9 between—

10 “(A) any insured depository institution,
11 any affiliate of such institution, or any other
12 person who is subject, directly or indirectly, to
13 the requirements of this section; and

14 “(B) any other insured depository institu-
15 tion, any affiliate of another insured depository
16 institution, any broker or dealer registered
17 under the Securities Exchange Act of 1934, any
18 person who is, or meets the requirements for,
19 an accredited investor, as such term is defined
20 in section 2(15)(i) of the Securities Act of
21 1933, or any other customer who the appro-
22 priate Federal banking agency determines, on
23 the basis of the financial sophistication of the
24 customer, does not need the protection afforded
25 by this section.

1 “(2) NO EFFECT ON OTHER AUTHORITY.—

2 “(A) IN GENERAL.—No provision of this
3 section shall be construed as limiting or other-
4 wise affecting—

5 “(i) any authority of the Securities
6 and Exchange Commission, any self-regu-
7 latory organization, the Municipal Securi-
8 ties Rulemaking Board, or the Secretary of
9 the Treasury under any Federal securities
10 law; or

11 “(ii) the applicability of any Federal
12 securities law, or any rule or regulation
13 prescribed by the Commission, any self-
14 regulatory organization, the Municipal Se-
15 curities Rulemaking Board, or the Sec-
16 retary of the Treasury pursuant to any
17 such law, to any person.

18 “(B) DEFINITIONS.—For purposes of this
19 paragraph:

20 “(i) FEDERAL SECURITIES LAW.—The
21 term ‘Federal securities law’ has the mean-
22 ing given to the term ‘securities laws’ in
23 section 3(a)(47) of the Securities Ex-
24 change Act of 1934.

1 “(ii) SELF-REGULATORY ORGANIZA-
2 TION.—The term ‘self-regulatory organiza-
3 tion’ has the meaning given to such term
4 in section 3(a)(26) of the Securities Ex-
5 change Act of 1934.

6 “(c) PROHIBITION ON MISLEADING AND DECEPTIVE
7 PRACTICES.—

8 “(1) IN GENERAL.—An insured depository in-
9 stitution may not permit any person to engage in
10 any practice, or employ any advertising, at any of-
11 fice of, or on behalf of, the institution which could
12 mislead any person or otherwise cause a reasonable
13 person to reach an erroneous belief with respect to—

14 “(A) the uninsured nature of any
15 nondeposit investment product sold, or offered
16 for sale, by—

17 “(i) the institution (in any capacity)
18 or any affiliate of the institution; or

19 “(ii) any other person in any office of,
20 or on behalf of, the institution; or

21 “(B) the investment risk associated with
22 any such product.

23 “(2) CONTENTS OF REGULATIONS.—The Fed-
24 eral banking agencies shall jointly prescribe rules of
25 fair practice governing retail sales, including phone

1 sales and direct mail solicitations, of nondeposit in-
2 vestment products by, on behalf of, or in any office
3 of, any insured depository institution (in any capac-
4 ity) and any affiliate of such institution.

5 “(3) RULES OF FAIR PRACTICE.—In prescribing
6 regulations pursuant to paragraph (2), the Federal
7 banking agencies shall take into account the Rules
8 of Fair Practice of the National Association of Secu-
9 rity Dealers and any other applicable rules or regu-
10 lations the agencies determine to be appropriate.

11 “(d) DISCLOSURE REQUIREMENTS.—

12 “(1) WRITTEN DISCLOSURES.—An insured de-
13 pository institution shall require any person who
14 sells or offers for sale any nondeposit investment
15 product in any office of, or on behalf of, the institu-
16 tion to disclose, in writing, to any person who seeks
17 to purchase, or seeks an opinion or investment ad-
18 vice about, any such product the following informa-
19 tion:

20 “(A) The nondeposit investment product is
21 not insured by the Federal Deposit Insurance
22 Corporation, the United States Government, or
23 the institution.

24 “(B) The product poses some investment
25 risk and the risk may involve the loss of prin-

1 cipal such that when the product is sold by the
2 investor, it may be worth less than when pur-
3 chased by the investor.

4 “(C) A clear description of the relationship
5 between the insured depository institution and
6 any other person which originated the product
7 or is otherwise directly or indirectly involved
8 with underwriting, selling, or distributing the
9 product.

10 “(D) If the nondeposit investment product
11 consists of shares issued by a registered invest-
12 ment company, the relationship between the in-
13 sured depository institution, or any affiliate of
14 the institution, and the investment company.

15 “(2) CUSTOMER’S SIGNED STATEMENT RELAT-
16 ING TO INITIAL PURCHASE OF NONDEPOSIT INVEST-
17 MENT PRODUCTS.—

18 “(A) IN GENERAL.—An insured depository
19 institution shall require any person selling a
20 nondeposit investment product at any office of,
21 or on behalf of, the institution to obtain, at the
22 time of the initial purchase by any person of
23 such product, a separate statement, signed and
24 dated by such person, which contains the dec-
25 laration that the purchaser has received, read,

1 and understood the disclosures required under
2 paragraph (1) with respect to such investment
3 product.

4 “(B) FORMAT OF DECLARATION.—The
5 declaration required under subparagraph (A)
6 shall be in a conspicuous and prominent loca-
7 tion on a sheet of paper which is separate from
8 a written application or any other document or
9 paper which such person signs or obtains in
10 connection with the initial purchase of a
11 nondeposit investment product.

12 “(C) SCOPE OF APPLICATION; TIMING.—
13 The declaration required to be obtained under
14 subparagraph (A) from any person shall be ob-
15 tained for the initial purchase of each type of
16 nondeposit investment product purchased by
17 the person before each such transaction is final.

18 “(3) DISCLOSURES IN THE CASE OF SUBSE-
19 QUENT PURCHASES THROUGH ELECTRONIC OR
20 TELEPHONE TRANSFERS.—In the case of a purchase
21 (other than an initial purchase) by any person of a
22 nondeposit investment product through, or in con-
23 junction with, an electronic funds transfer (as de-
24 fined in section 903(6) of the Electronic Fund
25 Transfer Act), a visual or oral notice may be pro-

1 vided (through the device used by the purchaser to
2 carry out such transfer), in lieu of the written disclo-
3 sure required under paragraph (1), reminding the
4 purchaser that the nondeposit investment product is
5 not a deposit which is insured by the Federal De-
6 posit Insurance Corporation, the United States Gov-
7 ernment, or the institution and poses some invest-
8 ment risk.

9 “(4) MODEL FORMS.—The Federal banking
10 agencies shall jointly prescribe regulations establish-
11 ing model forms which meet or exceed the minimum
12 requirements of this subsection.

13 “(5) ADVERTISING AND PROMOTIONAL MATE-
14 RIAL.—Any advertisement, solicitation, or pro-
15 motional or sales material which relates to any
16 nondeposit investment product which is sold, or of-
17 fered for sale, at any office of, or on behalf of, an
18 insured depository institution (including any solicita-
19 tion contained in any periodic statement issued by
20 the institution), and any sale confirmation notice or
21 periodic statement issued in connection with any
22 such product, shall contain the disclosures required
23 under paragraph (1).

24 “(e) LOCATION REQUIREMENTS.—

1 “(1) SALE OF PRODUCTS PROHIBITED IN AREA
2 WHERE DEPOSITS ARE ACCEPTED.—

3 “(A) IN GENERAL.—No insured depository
4 institution may permit any part of any banking
5 office of the institution to be used for selling or
6 offering for sale, or for providing any opinion or
7 investment advice with respect to, any
8 nondeposit investment product.

9 “(B) PHYSICALLY SEGREGATED AREA.—
10 The area in which any nondeposit investment
11 product is sold or offered for sale, or any opin-
12 ion or investment advice with respect to such
13 product is provided, shall not be treated, for
14 purposes of paragraph (1), as being part of a
15 banking office of an insured depository institu-
16 tion if such area is physically segregated from
17 the part of the office where deposits are accept-
18 ed or withdrawn.

19 “(2) POSTING OF NOTICE IN AREA OF SALES.—
20 An insured depository institution shall post, in a
21 conspicuous place in that part of any office of the
22 institution in which any nondeposit investment prod-
23 uct is sold or offered for sale, a notice that—

24 “(A) such part of the office is devoted to
25 the sale of nondeposit investment products

1 which are not insured by the Federal Deposit
2 Insurance Corporation, the United States Gov-
3 ernment, or the institution; and

4 “(B) deposits are not accepted at that lo-
5 cation.

6 “(f) EMPLOYEE SALES, TRAINING, AND COMPENSA-
7 TION.—

8 “(1) CERTAIN PERSONS PROHIBITED FROM
9 SELLING NONDEPOSIT INVESTMENT PRODUCTS.—An
10 insured depository institution may not permit any
11 person who accepts deposits from the public at any
12 office of, or on behalf of, an insured depository insti-
13 tution to sell or offer to sell, or offer an opinion or
14 investment advice on, any nondeposit investment
15 product.

16 “(2) REFERRAL.—Notwithstanding paragraph
17 (1), a person who accepts deposits from the public
18 at any office of, or on behalf of, an insured deposi-
19 tory institution may refer a customer who seeks to
20 purchase, or seeks an opinion or investment advice
21 on, any nondeposit investment product to a person,
22 or the phone number of a person, who sells or pro-
23 vides opinions or investment advice on such product
24 only if—

1 “(A) the customer explicitly requests such
2 referral; and

3 “(B) the person who accepts deposits—

4 “(i) does not solicit such request;

5 “(ii) discloses to the customer that
6 such product is not insured by the institu-
7 tion, the Federal Deposit Insurance Cor-
8 poration, or the United States Govern-
9 ment, or the institution; and

10 “(iii) does not receive any compensa-
11 tion for the referral.

12 “(3) QUALIFICATION REQUIREMENTS.—

13 “(A) IN GENERAL.—No insured depository
14 institution may permit any person to sell or
15 offer for sale, or provide an opinion or invest-
16 ment advice about, any nondeposit investment
17 product in any part of any office of the institu-
18 tion, or on behalf of the institution, unless such
19 person—

20 “(i) is registered with the Securities
21 and Exchange Commission as a broker or
22 dealer, as a representative of a broker or
23 dealer, or as an investment adviser; or

24 “(ii) meets qualification and training
25 requirements which the Federal banking

1 agencies jointly determine are equivalent to
2 the training and qualification requirements
3 applicable to a person who is registered
4 with the Commission as a broker or dealer,
5 as a representative of a broker or dealer,
6 or as an investment adviser, as the case
7 may be.

8 “(B) SUITABILITY OF INVESTMENT.—The
9 training required under subparagraph (A)(ii)
10 shall include training in making an accurate
11 judgment about the suitability of a particular
12 nondeposit investment product for a prospective
13 customer.

14 “(4) COMPENSATION STANDARDS.—The Fed-
15 eral banking agencies shall prescribe regulations es-
16 tablishing minimum requirements for insured deposi-
17 tory institution compensation programs that are de-
18 signed to ensure that the programs do not operate
19 as, and do not have the effect of providing, an incen-
20 tive for the sale of nondeposit investment products
21 to any customer in lieu of a more suitable invest-
22 ment option for such customer.

23 “(g) USE OF NAMES OF DEPOSITORY INSTITU-
24 TIONS.—

1 “(1) IN GENERAL.—No insured depository in-
2 stitution, and no affiliate of any insured depository
3 institution, may use or permit any other person to
4 use the name, title, or logo of such institution or any
5 word or design which is the same as or similar to,
6 or a variation of, the name, title, or logo of such in-
7 stitution in connection with—

8 “(A) the name of any investment company
9 for which the institution or affiliate acts as in-
10 vestment adviser; or

11 “(B) any nondeposit investment product—

12 “(i) which is offered for sale by the
13 institution or affiliate or by any other per-
14 son at any office of, or on behalf of, the in-
15 stitution; or

16 “(ii) with respect to which the institu-
17 tion, affiliate, or other person provides an
18 opinion or investment advice.

19 “(2) TRANSITION RULE.—During the 6-month
20 period beginning on the date of the enactment of the
21 Depository Institution Retail Investment Sales and
22 Disclosure Act, paragraph (1) shall not apply to the
23 use of the name, title, or logo of an insured deposi-
24 tory institution, or of any word or design which is
25 the same as or similar to, or a variation of, the

1 name, title, or logo of such institution, in a manner
2 otherwise prohibited by paragraph (1) if such use
3 began before such date of enactment.

4 “(3) POST-TRANSITION USE OF PRIOR NAMES
5 WHICH ARE NOT CONFUSING OR DECEPTIVE.—Not-
6 withstanding paragraph (1) or (2), if the use of the
7 name, title, or logo of an insured depository institu-
8 tion, or of a word or design which is the same as
9 or similar to, or a variation of, the name, title, or
10 logo of such institution, in a manner otherwise pro-
11 hibited by paragraph (1) began before the date of
12 the enactment of the Depository Institution Retail
13 Investment Sales and Disclosure Act, the appro-
14 priate Federal banking agency may permit such use
15 to continue after the end of the 6-month period re-
16 ferred to in paragraph (2) if the agency determines,
17 in writing and on a case-by-case basis, that such use
18 is unlikely to mislead any person or otherwise cause
19 a reasonable person to reach an erroneous belief
20 with respect to—

21 “(A) the uninsured nature of any
22 nondeposit investment product sold, or offered
23 for sale, by—

24 “(i) the institution (in any capacity)
25 or any affiliate of the institution; or

1 “(ii) any other person in any part of
2 any office of the institution; or

3 “(B) the investment risk associated with
4 any such instrument or product.

5 “(h) REQUIREMENTS RELATING TO CONFIDENTIAL
6 CUSTOMER INFORMATION.—

7 “(1) DISCLOSURES OF CONFIDENTIAL CUS-
8 TOMER INFORMATION PROHIBITED.—

9 “(A) IN GENERAL.—No insured depository
10 institution may disclose, directly or indirectly,
11 any confidential customer information to any
12 person, including any affiliate of such institu-
13 tion, without the prior written consent of the
14 customer.

15 “(B) RECORDS OF CUSTOMER CONSENT.—
16 Whenever any insured depository institution ob-
17 tains the prior written consent of a customer
18 for purposes of subparagraph (A), the affiliate
19 shall—

20 “(i) obtain an acknowledgment of
21 such consent by the customer, including
22 the date the consent was acknowledged
23 and the customer’s name, address, and any
24 applicable account number;

1 “(ii) inform the customer that the
2 consent (and the disclosure of the con-
3 fidential information) may not be not re-
4 quired as a condition for the performance
5 of services for the customer; and

6 “(iii) maintain records of compliance
7 with clauses (i) and (ii).

8 “(C) CUSTOMER DEFINED.—

9 “(i) IN GENERAL.—For purposes of
10 this subparagraph, the term ‘customer’
11 means any person who, after the date of
12 enactment of the Depository Institution
13 Retail Investment Sales and Disclosure
14 Act, establishes a deposit, trust, or credit
15 relationship with an insured depository in-
16 stitution.

17 “(ii) TREATMENT OF CERTAIN DEPOS-
18 ITS.—Any renewal of an account in an in-
19 sured depository institution and any roll-
20 over of a deposit in any such account shall
21 be treated as the establishment of a new
22 deposit relationship for purposes of clause
23 (i).

24 “(D) TREATMENT OF SEPARATELY IDEN-
25 TIFIABLE DEPARTMENT OR DIVISION.—For

1 purposes of this paragraph, the term ‘affiliate’
2 includes a separately identifiable department or
3 division of an insured depository institution
4 that is registered as an investment adviser pur-
5 suant to the Investment Advisers Act of 1940.

6 “(2) CONFIDENTIAL CUSTOMER INFORMATION
7 DEFINED.—

8 “(A) IN GENERAL.—For purposes of para-
9 graph (1), the term ‘confidential customer in-
10 formation’ means financial information regard-
11 ing any specific individual which has been de-
12 rived from any record of any insured depository
13 institution and pertains to the individual’s rela-
14 tionship with the institution.

15 “(B) CERTAIN INFORMATION NOT IN-
16 CLUDED IN DEFINITION.—Notwithstanding any
17 provision of paragraph (1), the term ‘confiden-
18 tial customer information’ shall not include—

19 “(i) any information obtainable from
20 an unaffiliated credit bureau or similar en-
21 tity or information obtainable in the ordi-
22 nary course of business from any other un-
23 affiliated entity;

1 “(ii) any information provided to any
2 credit bureau or similar entity in the ordi-
3 nary course of business;

4 “(iii) any information provided—

5 “(I) to any appropriate Federal
6 regulatory agency; or

7 “(II) in accordance with the
8 Right to Financial Privacy Act of
9 1978 to any Government authority (as
10 defined in section 1101(3) of such
11 Act); and

12 “(iv) financial information the use of
13 which (by an insured depository institu-
14 tion, any affiliate of such institution, or
15 any agent of or contractor with such insti-
16 tution or affiliate) is limited to the per-
17 formance of—

18 “(I) any function which is nec-
19 essary to maintain a customer’s exist-
20 ing deposit, trust, or credit account
21 with the institution, including the col-
22 lection of any amount due the institu-
23 tion by the customer with respect to
24 any such account; or

1 “(II) due diligence evaluations in
2 connection with the purchase or sale
3 of loan assets or servicing rights.

4 “(3) DISCLOSURE OF ADDITIONAL CUSTOMER
5 INFORMATION.—In addition to any requirement or
6 limitation contained in this section, the appropriate
7 Federal banking agency may prescribe regulations
8 limiting disclosures of nonpublic customer informa-
9 tion from any insured depository institution to any
10 affiliate of such institution, including an evaluation
11 of the creditworthiness of an issuer or other cus-
12 tomer of that insured depository institution or any
13 affiliate of such institution.

14 “(i) COMPLIANCE REQUIREMENT.—

15 “(1) IN GENERAL.—In conducting any exam-
16 ination of an insured depository institution, the ap-
17 propriate Federal banking agency shall include an
18 examination of the institution’s record of compliance
19 with the provisions of this section and the institu-
20 tion’s procedures for ensuring such compliance.

21 “(2) PROCEDURES.—An insured depository in-
22 stitution which permits any person who is not an of-
23 ficer or employee of the institution to sell or offer
24 for sale, or provide an opinion or investment advice
25 on, nondeposit investment products on behalf of the

1 institution or in any part of any office of the institu-
2 tion shall establish procedures to ensure that the re-
3 quirements of this section are met by such person.

4 “(3) TESTERS.—It is the sense of the Congress
5 that the Federal banking agencies should conduct
6 testing of insured depository institution practices
7 with regard to selling, and providing opinions and
8 investment advice on, nondeposit investment prod-
9 ucts using testers who, without an intent to pur-
10 chase such products, pose as prospective purchasers
11 of such products for the purpose of collecting evi-
12 dence of violations of this section and regulations
13 prescribed under this section.”.

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